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May 31, 2005

E-FILED SERVICE

Magistrate Judge Edward M. Chen
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: VFD Consulting v. 21st Services, et
USDC Northern District of California Case No. 04-cv-02161 SBA EMC
Complete Resolution of Defendants' Motion to Compel (Docket Item No. 82)

Hon. Magistrate Judge Chen:

After an hour and a half face to face meet and confer on May 11, 2005, the parties reached an agreement that ultimately resolved the discovery dispute. The meet and confer was attended by Tim Lord, counsel for Plaintiff and Robert Bodzin, counsel for Defendants. Prior to the session, there were two main issues that were disputed: (1) whether Plaintiff's special interrogatory answers could incorporate by reference other discovery responses, rather than being complete on their own and (2) whether Plaintiff's document production responses could incorporate by reference other discovery responses (such as "see Initial Disclosures"), rather than identify specific documents either by Bates stamp number or title..

After the session, the parties agreed that by May 25, 2005, Plaintiff would serve second supplemental responses to the disputed special interrogatories and document production responses which addressed Defendants' objections. After reviewing Plaintiff's Second Supplemental Responses to Special Interrogatories, Set 1 and Plaintiff's Second Supplemental Responses to Request for Production of Documents, Set 1 (these responses are attached), the parties have resolved the issues presented by the motion as follows:

I. RESOLVED DISCOVERY DISPUTE

- Agreement No. 1: Responses to Special Interrogatories No. 3, 4, 8, 10, 11, 13 and 15-17 are complete on their own and do not incorporate by reference responses to other interrogatories or discovery; Defendants no longer object to these responses.

- Agreement No. 2: Responses to Document Production Requests No. 11-13 are complete on their own and identify specific responsive documents wither by Bates stamp and/or title; Defendants no longer object to these responses.
- Agreement No.3: By June 10, 2005, Plaintiff will serve a Third Supplemental Response to Special Interrogatory No. 3 that provides the titles of responsive research documents;
- Agreement No. 4: By June 10, 2005, Plaintiff will serve copies of its tax returns with attachments as its Third Supplemental Response to Document Production Request No. 13.

Based on these agreements are simultaneously filing a Notice of Withdrawal of the Motion pursuant to Civil Local Rule 7-7(e).

If anyone has any questions, please let us know.

Respectfully submitted,

BURNHAM BROWN

Robert M. Bodzin

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH, LLP

Timothy R. Lord

RMB/imh
Enclosures

700556

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Attorneys for Plaintiff
VFD CONSULTING, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VFD CONSULTING, INC.; Plaintiff, v. 21st SERVICES; 21st HOLDINGS, LLC; PAUL KIRKMAN; and DOES 1 through 5, inclusive; Defendants.	CASE NO. C 04-2161 SBA *(Consolidated with Case No. C-04-2162 SBA)* **PLAINTIFF'S SECOND AMENDED RESPONSES TO INTERROGATORIES, SET ONE**

PROPOUNDING PARTY: Defendant 21st HOLDINGS, LLC

RESPONDING PARTY: Plaintiff VFD CONSULTING, INC.

SET NUMBER: One

Plaintiff VFD CONSULTING, INC. (hereinafter "VFD") hereby amends its responses to the Interrogatories, Set No. 1, propounded by Defendant 21st HOLDINGS, LLC (hereinafter "21st"), without prejudice to further discovery and reserving the right to present evidence of any subsequently discovered facts at trial of this action.

Each of the following responses is rendered and based upon information in the possession of the responding party at the time of the preparation of these responses. Discovery will continue as

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long as permitted by statute or stipulation of the parties, and the investigation of the responding parties, attorneys, and agents will continue to and throughout the trial of this action. Responding party, therefore, specifically reserves the right, at the time of trial, to introduce any evidence from any source which may hereafter be discovered and testimony from any witnesses whose identity may hereafter be discovered.

These introductory comments shall apply to each and every one of the following responses, and shall be incorporated by reference as though fully set forth herein.

INTRODUCTION

Said responses are being provided in an effort to give propounding party as much factual information as responding party has at its disposal at this time. At the present time, however, responding party has just commenced its discovery efforts relative to this litigation. As such, said responses are being made at this time in good faith without prejudice to being changed, modified, or altered at any time in the future as discovery and investigation in this case continue and further facts become known.

RESPONSES TO INTERROGATORIES

RESPONSE TO INTERROGATORY NO. 3:

Objection. VFD objects to this interrogatory on the grounds that it is overbroad and unduly burdensome. VFD objects to this interrogatory on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. VFD further objects to this interrogatory on the grounds that it seeks to discover plaintiff's confidential financial matters. A right to privacy exists as to a party's confidential financial affairs, even when the information sought is admittedly relevant to the litigation. (*Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550.) Moreover, the confidential financial affairs of third parties (nonparties) are entitled to privacy; and this may limit discovery by one party from the other. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal3d 652, 658.) Without waiving said objections, VFD responds that it will provide the following information:

VFD is in the business of providing risk assessment research and product development to life insurance and related industries. The names of its clients include the following:

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1. AOI Communications

a. Freelance writing and editing for a pharmaceutical conference;

b. 2004;

c. Gretchen Kemp, Account Manager;

d. Yes;

e. No.

2. ATSET Consulting Group, Inc.

a. Consulting;

b. 2002-present;

c. Ernie Testa, Account Manager;

d. Yes;

e. No.

3. Bank of America

a. Developed prototype for automated human resources management program;

b. 1993;

c. Unknown;

d. Yes;

e. No.

4. Calypte Biomedical

a. Wrote an article on the wonders of urine testing;

b. 2000;

c. Kip Whitefield;

d. Yes;

e. No.

5. Cananda Life Reinsurance

a. Worked on underwriting manual and analyzed mortality experience;

b. 2001-2003;

c. Gordon Gibbons;

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d. Yes;

e. No.

6. Charles Schwab & Co.

a. Statistical analysis of customer accounts;

b. 2001;

c. Unknown;

d. Yes;

e. No.

7. Clinical Reference Laboratory

a. Medical literature research and publication of laboratory results;

b. 2004-present;

c. Brian Coens;

d. Yes;

e. No.

8. CINCO

a. Analyzed data from National Association of Insurance Commissioners;

b. 2001;

c. Bob Cross;

d. Yes;

e. No.

9. Federal Home Loan Bank of (San Francisco)

a. Devised a technology plan;

b. 2000;

c. Unknown;

d. Yes;

e. No.

10. First Financial Underwriting Services

a. Consulting;

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b. 2002-present;

c. Ernie Testa;

d. Yes;

e. No.

11. First Health Group Corporation

a. Analyzed health claims data for client Inland Steel;

b. 1992 or 1993;

c. Sandra Bulow-Huve;

d. Yes;

e. No.

12. General American Life Insurance Company

a. Analyzed life insurance case experience;

b. 1990;

c. Paul McDaniel;

d. Yes;

e. No.

13. Hank George, Inc.

a. Research study;

b. 2003;

c. Hank George;

d. Yes;

e. No.

14. Hooper Holmes Canada

a. Technology assessment project for Met Life Canada;

b. 1997;

c. Mike Woodroffe and Romeo Vitaglino;

d. Yes;

e. No.

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15. Inland Steel
    a. Analyzed health claims data for client Inland Steel;
    b. 1992 or 1993;
    c. Sandra Bulow-Huve;
    d. Yes;
    e. No.
16. Insure.com
    a. Updated consumer advisory articles;
    b. 2004;
    c. Vice President of company, the name was deleted;
    d. Yes;
    e. No.
17. Lab*One*, Inc.
    a. Wrote an article;
    b. 2001;
    c. Gregg Sadler;
    d. Yes;
    e. No.
18. Lincoln National Reinsurance
    a. Employed in underwriting & research;
    b. 1982-85;
    c. Jess Nast;
    d. Yes;
    e. No.
19. Los Angeles County Scientific Crime Laboratories
    a. Developed a technology plan for linking crime evidence together;
    b. 1989;
    c. Broker Mike Miskinnis;

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d. Yes;

e. No.

20. MetLife Canada

a. Technology assessment project for Met Life Canada;

b. 1997;

c. Mike Woodroffe and Romeo Vitaglino;

d. Yes;

e. No.

21. Millennium Pharmaceuticals

a. Freelance writing and editing for a pharmaceutical conference;

b. 2004;

c. Gretchen Kemp, Account Manager;

d. Yes;

e. No.

22. North Coast Opportunities

a. Did a survey;

b. 2002;

c. Michael Kisslinger;

d. Yes;

e. No.

23. OCS Technologies

a. Geographic mapping services for emergency response in Southern California cities;

b. 2000;

c. Unknown;

d. Yes;

e. No.

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24. *On The Risk*

a. Writing & editing and set up online search facility;

b. 1994-present;

c. John Krinik;

d. Yes;

e. No.

25. Partner Life Reinsurance

a. Pension underwriting research;

b. 1994;

c. Gary Lee;

d. Yes;

e. No.

26. PMSI

a. Strategic background for underwriting technology;

b. 1996 or 1997;

c. Mike Gains;

d. Yes;

e. No.

27. Protective Life Insurance Company

a. Consulting;

b. 2002-present;

c. Ernie Testa, Account Manager;

d. Yes;

e. No.

28. Quotesmith

a. Updated consumer advisory articles;

b. 2004;

c. Vice President of company, the name was deleted;

d. Yes;

e. No.

29. RiskGuide (dba of VFD Consulting)

a. Online research education for life underwriters;

b. 2000;

c. Self;

d. Yes;

e. No.

30. Safe Harbor Resources

a. Strategical background; board member, consultant;

b. 2002-present;

c. Dave Allburn;

d. Yes;

e. No.

31. Sagicor Financial Corporation

a. Consulting;

b. 2002-present;

c. Ernie Testa, Account Manager;

d. Yes;

e. No.

32. Thomson Management Solutions

a. Survey on insurance technologies;

b. 2004;

c. Maria Thompson;

d. Yes;

e. No.

33. Transamerica Occidental Life Insurance Co.

a. Employed doing underwriting and research;

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b. 1985-88;

c. Lloyd Von Sprecken;

d. Yes;

e. No.

34. 21st Holdings

a. The asking party already has this information;

b. 1998;

c. Paul Kirkman;

d. Yes;

e. Yes.

35. United Insurance Companies

a. Analyzed health claims data for client Inland Steel;

b. 1992 or 1993;

c. Sandra Bulow-Huve;

d. Yes;

e. No.

36. Wells Fargo Bank

a. Consultant performing statistical analysis of business and consumer bank accounts;

b. 1995-98;

c. Bobby Panlasigue;

d. Yes;

e. No.

37. Xcelerate Corporation

a. Analysis of market for customer management software;

b. 1995-98;

c. Bobby Panlasigue;

d. Yes;

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e. No.

INTERROGATORY NO. 4

With respect to your claim for damages, please:

a. Identify in detail the method by which each element of the alleged damages is calculated or determined;

b. Identify each person who performed any function with respect to the calculation or determination of each claim for damages and state what function was performed by he or she; and

RESPONSE TO INTERROGATORY NO. 4

Objection. VFD objects to this interrogatory on the grounds that it seeks information protected from disclosure by the attorney-client privilege. VFD further objects to this interrogatory on the grounds that it seeks to invade plaintiff counsel's work product privilege in that it calls for this responding party to provide an analysis of the alleged damages were calculated. (*Kaiser v. Superior Court* (1969) 275 Cal.App. 2d 801.) Finally, the identity of consultants retained to calculate damages is protected from disclosure by the attorney work product privilege. (FRCP 26(a)(2)(B); *Hermsdorfer v. American Motors Corp.* (WD NY 1982) 96 FRD 13, 15.) (*City of Long beach v. Superior Court* (1976) 64 Cal.App.3d 65.) Without waiving said objections, VFD responds as follows:

a. Damages will be calculated by obtaining information from defendants, calculating the total revenue generated by their unauthorized use of the intellectual property owned by Vera Dolan and verifying with 21st Services' documents the amounts paid to Vera Dolan for her services and intellectual property and punitives, restitutionary and other damages to be determined prior to trial.

b. Tim Lord and Vera Dolan.

INTERROGATORY NO. 8

Identify all facts, documents, tangible things and/or witnesses you claim support the allegations contained in Count II of your Complaint in the matter numbered C 04 2161, that Defendants engaged in fraud.

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RESPONSE TO INTERROGATORY NO. 8

Objection. VFD objects to this interrogatory on the grounds that it is vague, ambiguous and overly broad in scope. VFD further objects to this interrogatory on the grounds that it seeks information that is protected from disclosure by the attorney-client and work product privileges. Without waiving said objections, VFD responds as follows:

It is plaintiff's information and belief: (1) Vera Dolan of VFD spoke to Paul Kirkman in January 2004 and he untruthfully stated that he was not aware of anyone having complaints about the output of the MedDiag system. VFD reasonably relied on these statements to its detriment. (2) 21st Services failed to inform VFD that MedDiag required maintenance and mislead VFD about the nature of the system's maintenance status. (3) 21st Services mislead VFD in an attempt to induce VFD to sign a contract under terms that were disadvantageous to VFD.

Discovery and investigation continue and plaintiff reserves the right to supplement this response as soon as additional information and documents become available.

INTERROGATORY NO. 10

Identify all facts, documents, tangible things and/or witnesses you claim support the allegations contained in Count IV of your Complaint in the matter numbered C 04 2161, that Defendants misappropriated a trade secret, including but not limited to facts detailing all trade secrets allegedly misappropriated, from what source or sources each alleged trade secret was obtained or developed by plaintiff, and exactly what measures were taken by plaintiff to protect these alleged trade secrets as secrets.

RESPONSE TO INTERROGATORY NO. 10

Objection. VFD objects to this interrogatory on the grounds that it is vague, ambiguous and overly broad in scope. VFD further objects to this interrogatory on the grounds that it seeks information that is protected from disclosure by the attorney-client and work product privileges. Without waiving said objections, VFD responds as follows:

It is plaintiff's information and belief that 21st Services permitted an examination of MedDiag by Deb Schmidt and took no precautions to ensure that Schmidt or others did not misappropriate this proprietary property for their own uses. Rick Bergstrom gained access to VFD's proprietary

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intellectual property from Deb Schmidt and then represented VFD's proprietary property as his own and sold it to EMSI.

Documents include an interoffice memorandum to Rick Bergstrom from Deb Schmidt, dated 8/21/00 regarding 21st Services File Audits. The document is stamped "Confidential - Draft Report."

In addition, VFD made reasonable efforts to ensure that the Trade Secret remained a secret by not disclosing this process to anyone and only disclosing it to 21st Services under the Agreement to provide consulting services. Since approximately 2/10/04, 21st Services misappropriated VFD's Trade Secret and continues to use it without permission.

Discovery and investigation continue and plaintiff reserves the right to supplement this response as soon as additional information and documents become available.

INTERROGATORY NO. 11

Identify all facts, documents, tangible things and/or witnesses you claim support the allegations contained in Count V of your Complaint in the matter numbered C 04 2161, that Defendants are liable to you based on a theory of conversion.

RESPONSE TO INTERROGATORY NO. 11

Objection. VFD objects to this interrogatory on the grounds that it is vague, ambiguous and overly broad in scope. VFD further objects to this interrogatory on the grounds that it seeks information that is protected from disclosure by the attorney-client and work product privileges. Without waiving said objections, VFD responds as follows:

It is plaintiff's information and belief that since approximately November 2003, 21st Services had been negotiating with VFD regarding a new written contract. 21st Services had provided VFD with various drafts of a document entitled, "Consulting Agreement." The last draft was emailed to VFD on 1/28/04. Prior to the last draft, on 1/16/04, 21st Services stopped paying VFD the agreed upon sum of $1,000 per week for the right to use VFD's case evaluation product pursuant to their oral contract (dated August 19, 2001). This constituted a breach of the oral contract.

On 2/10/04, former counsel for VFD, Caren Callahan, sent via electronic transmission, a notice of breach of contract, demand to cease and desist from using VFD's intellectual property

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and a demand for an accounting of all case evaluations performed by 21st Services between 8/18/98 through the present. To date, defendant has refused to provide the accounting or pay VFD.

On 2/19/04, Ms. Callahan sent via email a letter stating that VFD had in its possession evidence of the oral contract, specifically the payment history between 21st Services and VFD from 8/19/01 through the date of the breach of the oral contract on 1/8/04. As indicated on the checks, payment was for 21st Services' use of VFD's case evaluation process.

INTERROGATORY NO. 13

Identify all other entities, organizations, corporations (whether limited liability or otherwise), partnerships (whether general, limited, or otherwise), or joint ventures in which Vera Dolan enjoyed a property interest or have common shareholders during the past ten years. "Property Interest," for purposes of this Interrogatory, includes any ownership stake, whether characterized as equity, stock, shares or otherwise. As part of your answer, identify the custodian of records for each entity, the amount of shares Dolan owns in the entity, the entity's address, its state of incorporation or registration, and describe the nature of Dolan's interest.

For each entity, organization, corporation (whether limited liability or otherwise), partnership (whether limited, general or otherwise), or joint venture identified above, describe the organization's history (including all corporate predecessors and the dates of existence) and/or corporate name changes (and the dates). Your answer should include (without limitation) identification of all corporations in the chain of ownership and all directors and officers.

RESPONSE TO INTERROGATORY NO. 13

Objection. VFD objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and not likely to lead to the discovery of admissible evidence. VFD further objects to this interrogatory on the grounds that it seeks to discovery plaintiff's confidential financial matters. A right to privacy exists as to a party's confidential financial affairs, even when the information sought is admittedly relevant to the litigation. (*Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550.) Without waiving said objections, VFD responds as follows:

Will produce tax documents in her possession from 1996 to present.

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INTERROGATORY NO. 15

If you claim that you or Vera Dolan were entitled to payment for services and or royalties after August 2001, identify all facts that support such claim.

RESPONSE TO INTERROGATORY NO. 15

It is plaintiff's information and belief that since approximately November 2003, 21st Services had been negotiating with VFD regarding a new written contract. 21st Services had provided VFD with various drafts of a document entitled, "Consulting Agreement." The last draft was emailed to VFD on 1/28/04. Prior to the last draft, on 1/16/04, 21st Services stopped paying VFD the agreed upon sum of $1,000 per week for the right to use VFD's case evaluation product pursuant to their oral contract (dated August 19, 2001). This constituted a breach of the oral contract.

On 2/10/04, former counsel for VFD, Caren Callahan, sent via electronic transmission, a notice of breach of contract, demand to cease and desist from using VFD's intellectual property and a demand for an accounting of all case evaluations performed by 21st Services between 8/18/98 through the present. To date, defendant has refused to provide the accounting or pay VFD.

On 2/19/04, Ms. Callahan sent via email a letter stating that VFD had in its possession evidence of the oral contract, specifically the payment history between 21st Services and VFD from 8/19/01 through the date of the breach of the oral contract on 1/8/04. As indicated on the checks, payment was for 21st Services' use of VFD's case evaluation process.

It is plaintiff's information and belief that 21st Services permitted an examination of MedDiag by Deb Schmidt and took no precautions to ensure that Schmidt or others did not misappropriate this proprietary property for their own uses. Rick Bergstrom gained access to VFD's proprietary intellectual property from Deb Schmidt and then represented VFD's proprietary property as his own and sold it to EMSI.

Documents include an interoffice memorandum to Rick Bergstrom from Deb Schmidt, dated 8/21/00 regarding 21st Services File Audits. The document is stamped "Confidential - Draft Report."

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It is plaintiff's information and belief that 21st Services permitted an examination of MedDiag by Deb Schmidt and took no precautions to ensure that Schmidt or others did not misappropriate this proprietary property for their own uses. Rick Bergstrom gained access to VFD's proprietary intellectual property from Deb Schmidt and then represented VFD's proprietary property as his own and sold it to EMSI. Documents include an interoffice memorandum to Rick Bergstrom from Deb Schmidt, dated 8/21/00 regarding 21st Services File Audits. The document is stamped "Confidential - Draft Report." In addition, VFD made reasonable efforts to ensure that the Trade Secret remained a secret by not disclosing this process to anyone and only disclosing it to 21st Services under the Agreement to provide consulting services. Since approximately 2/10/04, 21st Services misappropriated VFD's Trade Secret and continues to use it without permission.

INTERROGATORY NO. 16

Detail each and every conversation that Vera Dolan has had with Alan Buerger or any other officer, employee or agent of Coventry First concerning 21st Services within the last six months.

RESPONSE TO INTERROGATORY NO. 16

Objection. VFD objects to this interrogatory on the grounds that it is harassing and overly broad in scope. VFD further objects to this interrogatory on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, plaintiff responds:

Ms. Dolan had a telephone conversation with Alan Buerger on 9/10/04. Ms. Dolan's notes of that conversation are attached to plaintiff's supplemental responses to defendants' Request For Production of Documents, attached hereto.

Ms. Dolan also had a conversation with Alan Buerger in November 2004 at an underwriter's conference in which very divergent issues were discussed, including whether or not Coventry would fund her suit against 21st Services. Mr. Buerger responded, no.

INTERROGATORY NO. 17

Detail each and every conversation or communication that Vera Dolan has had with any third parties within the last six months, including but not limited to attendees at trade conferences, relating to 21st Services and any allegation that 21st Services stole VFD's trade secrets, failed to pay for VFD's work on the MedDiag system, misused the MedDiag system or provided false life expectancies in the viatical settlements.

RESPONSE TO INTERROGATORY NO. 17

Objection. VFD objects to this interrogatory on the grounds that it is harassing and overly broad in scope and in time. VFD further objects to this interrogatory on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, plaintiff responds:

1. Heath MacLauglin - Ms. Dolan met and spoke with MacLaughlin at a life settlement conference in November 2004. They also had follow up emails and telephone conversations. They discussed Ms. Dolan's complaint with 21st.

2. Bryan Freeman - Ms. Dolan met and spoke with Mr. Freeman at a life settlement conference in November 2004. See VFD's Supplemental disclosures for letter outlining the conversation

DATED: May 25, 2005

LEWIS BRISBOIS BISGAARD & SMITH LLP

By [signature]

Timothy R. Lord
Attorneys for Plaintiff
VFD CONSULTING, INC.

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PROOF OF SERVICE
VFD Consulting, Inc. v. 21st Services, et al.
Case No. C 04-2161 SBA

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is One Sansome Street, Suite 1400, San Francisco, California 94104.

On May 26, 2005, I served the following document described as **PLAINTIFF'S SECOND AMENDED RESPONSES TO INTERROGATORIES, SET ONE** on all interested parties in this action by placing [X] a true copy [ ] the original thereof enclosed in sealed envelopes addressed as follows:

Robert M. Bodzin
Rohit A. Sabnis
BURNHAM BROWN
1901 Harrison Street, 11th Floor
Oakland, CA 94604

Jeffrey R. Thompson
Mary M. O'Brien
Bradely J. Lindeman
MEAGHER & GEER
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402

Stephen J. Kastenberg
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

Brian P. Brooks
Melissa A. Holyoak
O'Melveny & Myers LLP
1625 I Street, NW
Washington, DC 20006

Randall K. Miller
Arnold & Porter LLP
555 12th Street, NW
Washington, DC 20004

[ ] (BY FACSIMILE) The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission.

[X] (BY MAIL, 1013a, 2015.5 C.C.P.)

[ ] I deposited such envelope in the mail at San Francisco, California. The envelope was mailed with postage thereon fully prepaid.

[X] I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY HAND DELIVERY) I delivered the foregoing envelope by hand to the offices of the addressee.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

LEWIS BRISBOIS BISGAARD & SMITH LLP
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Executed on May 26, 2005, at San Francisco, California.

Shawn Adams

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Attorneys for Plaintiff
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VFD CONSULTING, INC.; Plaintiff, v. 21st SERVICES; 21st HOLDINGS, LLC; PAUL KIRKMAN; and DOES 1 through 5, inclusive; Defendants.	CASE NO. C 04-2161 SBA *(Consolidated with Case No: C-04-2162 SBA)* **PLAINTIFF'S SECOND AMENDED RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE**

PROPOUNDING PARTY: Defendant 21st HOLDINGS, LLC

RESPONDING PARTY: Plaintiff VFD CONSULTING, INC.

SET NUMBER: One

Pursuant to Fed.R.Civ.P. §34, Plaintiff VFD CONSULTING, INC. ("VFD") hereby amends its responses to Defendant 21st HOLDINGS, LLC's ("21st") Request for Production of Documents as follows:

GENERAL OBJECTIONS

Defendant responds that its has not completed its investigation of the facts relating to this action, has not completed discovery in this action, and has not yet completed preparation for trial. Therefore, the following responses are given without prejudice to the right to produce, at the time

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of trial or other hearing, subsequently discovered evidence relating to the proof of presently-known material facts, and to produce all evidence whenever discovered, relating to the proof of subsequently discovered material facts.

These responses are made solely for the purpose of this action. Each answer is subject to all objections as to competence, relevance, materiality, propriety, inadmissibility and any and all other objections and grounds which would require the exclusion of any statement herein if the questions were asked, or any statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are reserved and may be interposed at the time of trial. Except for explicit facts admitted herein, no incidental or implied admissions are intended hereby. The fact that VFD has answered any request herein should not be taken as an admission that VFD accepts or admits the existence of any facts set forth or assumed by such request, except as expressly stated in VFD's response, or that such response constitutes admissible evidence. The fact that VFD has answered part or all of any request is not intended and shall not be construed to be a waiver by plaintiff of all or any part of any objection to any request herein.

VFD objects to each and every request to the extent that any such request seeks information prepared in anticipation of litigation or for trial, or which are otherwise protected by the attorney work-product doctrine. Such information will not be disclosed and any inadvertent disclosure thereof shall not be deemed a waiver of any privilege with respect to such information.

VFD objects to each and every request to the extent that any such request seeks information protected by the attorney-client privilege. Such information will not be disclosed and any inadvertent disclosure thereof shall not be deemed a waiver of any privilege with respect to such information.

VFD objects to each and every request to the extent that any such request seeks information protected by constitutional, statutory or judicial guarantees of privacy. Such information will not be disclosed and any inadvertent disclosure thereof shall not be deemed a waiver of any privilege with respect to such information.

VFD objects to the time and place for production. VFD will make the documents available for inspection at a mutually convenient date, time, and place.

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These "General Objections" are deemed to be incorporated into the responses to each request and the responses contained herein are made subject to each of the "General Objections."

RESPONSE TO DEMAND FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 11:

All documents that you claim support that you hold a trade secret in the MedDiag computer system that you claim is at issue in this lawsuit, including but not limited to all documents that reflect that you created the trade secret, that the information is not publicly accessible from any source, that you protected that trade secret as a secret, etc.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Objection. VFD objects to this request on the grounds that it seeks documents that are equally available to the requesting party. Without waiving said objections, VFD responds as follows:

The only documents responsive to this request in plaintiff's custody and control have already been produced to defendant in the Initial Disclosure and Supplemental Initial Disclosures. Bate Stamped documents numbers 1-205 are all the documents responsive to this request in plaintiff's custody and control. We reserve the right to supplement this response.

REQUEST FOR PRODUCTION NO. 12:

All documents, including work product, research, or notes prepared, assembled, or gathered by you in performing work for any of the Defendants.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Objection. VFD objects to this request on the grounds that it is protected by the work product doctrine, overbroad and not reasonably calculated to lead to admissible evidence. Without waiving said objections, VFD responds as follows:

The only documents responsive to this request in plaintiff's custody and control have already been produced to defendant in the Initial Disclosure and Supplemental Initial Disclosures. Bate Stamped documents numbers 1-205 are all the documents responsive to this request in plaintiff's custody and control. In addition to the documents previously submitted in response to the Initial

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Disclosures, Vera Dolan will identify all research materials responsive to this request. We reserve the right to supplement this response.

REQUEST FOR PRODUCTION NO. 13:

All documents evincing your income for the years of 1996 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Objection. VFD objects to this request on the grounds that it is harassing, overbroad, and not reasonably calculated to lead to admissible evidence. VFD further objects to this request on the grounds that it seeks to discovery confidential financial records that are protected form disclosure by a right to privacy. (*Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550.). Without waiving said objections, plaintiff responds:

Plaintiff will produce tax returns from 1996 to present.

DATED: May 25, 2005

LEWIS BRISBOIS BISGAARD & SMITH LLP

By [signature]
Timothy R. Lord
Attorneys for Plaintiff
VFD CONSULTING, INC.

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PROOF OF SERVICE
VFD Consulting, Inc. v. 21st Services, et al.
Case No. C 04-2161 SBA

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is One Sansome Street, Suite 1400, San Francisco, California 94104.

On May 26, 2005, I served the following document described as **PLAINTIFF'S SECOND AMENDED RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE** on all interested parties in this action by placing [X] a true copy [ ] the original thereof enclosed in sealed envelopes addressed as follows:

Robert M. Bodzin
Rohit A. Sabnis
BURNHAM BROWN
1901 Harrison Street, 11th Floor
Oakland, CA 94604

Jeffrey R. Thompson
Mary M. O'Brien
Bradely J. Lindeman
MEAGHER & GEER
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402

Stephen J. Kastenberg
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

Brian P. Brooks
Melissa A. Holyoak
O'Melveny & Myers LLP
1625 I Street, NW
Washington, DC 20006

Randall K. Miller
Arnold & Porter LLP
555 12th Street, NW
Washington, DC 20004

[ ] (BY FACSIMILE) The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission.

[X] (BY MAIL, 1013a, 2015.5 C.C.P.)

[ ] I deposited such envelope in the mail at San Francisco, California. The envelope was mailed with postage thereon fully prepaid.

[X] I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY HAND DELIVERY) I delivered the foregoing envelope by hand to the offices of the addressee.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

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Executed on May 26, 2005, at San Francisco, California.

Shawn Adams

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Phone Conversation with Al Berger, September 10, 2004

I received a call from Al Berger, CEO of Coventry First, at 12:10 pm, Pacific time.

"My name is Al Berger, and Mike Fasano referred me to you. Do you know who I am?" I replied that the name sounded familiar, but I could not place it. He then said that he was the CEO of Coventry First. I then instantly recognized who he was, and said so.

Mr. Berger said that he was calling today because he wanted to talk to me, and that he was interested in buying my system. I asked him what was the situation of his case against EMSI, and he said that it was currently scheduled for hearing in the courts, but there are some technical issues about the standing of Coventry in the suit against EMSI. That case is winding its way through the court system.

Mr. Berger said that he took action against EMSI very reluctantly. He understood that the life expectancy calculations may have been done consistently with regard to debits, credits and the underlying life table, but the way EMSI was selling the life expectancy calculations was giving the industry a bad name. I said that I knew Mike Gaines personally, and that we have a friendly collegial relationship that goes back many years. I said that Mike had told me some things about EMSI that I felt I had to keep in confidence. Mr. Berger said that he understood that.

Mr. Berger said that the life settlement industry has had a very bad reputation over the past 10 years, and that he was trying through Coventry First to make the industry legitimate and well respected. I asked him how Coventry was doing now, and he said that it was having its best year ever, with cases coming in now from Germany and Japan as well.

Mr. Berger described his marketing system as in-house brokers who deal directly with the client. He has about 40 of them. No other life settlement provider does this – they all go through independent brokers who shop the case to get the best price. I asked if his system was working well for him, and he said that it was working very well.

I said that I understood that AIG was providing the underwriting for him. He said that was correct, there are 10 AIG underwriters working in-house for him on assessing life expectancies. AIG has invested in Coventry, as well as Citigroup and some others. Mr. Berger said that he has been approached every day by investors wishing to put money into Coventry, but he is very careful to accept only those investors he thinks truly care about what happens to the clients of Coventry.

He has been comparing EMSI's and 21st Holding's cases against what his underwriters were calculating on about 200 of the same cases, and both EMSI's and 21st Holding's were coming up unexplainably aggressive. For example, one case came up with a 16.8 year life expectancy, while (?)'s assessment for the same case was 62 years.

Mr. Berger said that he did not want Coventry First to be the only one in the life settlement business – he does want others to compete as well. He used to be a life insurance agent himself, so he cares about what happens to the client. However, he does not want to see the life settlement industry abused so that the industry overall will get a bad name. If life settlement investors are cheated, no one will want to do business in the industry.

Mr. Berger said that he was not only interested in building his company, Coventy Life, but also building the life settlement industry so that it is healthy and well respected. That is why he took action against EMSI, and has been considering very carefully possible actions against others. I asked if he meant as "others" 21st Holdings, because I have interests and issues associated with them.

Mr. Berger said that, yes, 21st was one of the companies he was considering taking action against. He said that he monitors every day the people who visit the Coventry website, and did notice that someone in my office visited the Coventry website and request a copy of the EMSI action. I said that person was me, and I did read the suit to see what Coventry had to say about EMSI.

Mr. Berger said that at the time that he was having talks with EMSI about their life expectancy results, he sought out people not connected with EMSI or Coventry to come in with an independent opinion. He heard my name from Mike Fasano and Phil Loy, and suggested my name to Mike Gaines.

I said that Mike Gaines did contact me, but I never came in to help EMSI with their problems. I asked Mr. Berger to finish what he had to tell me, and let me know what he was calling about. I said that he really didn't want to buy a system from me – what can I do for him? I said that I would share with him my relationship with 21st after he told me what he wanted.

Mr. Berger said that he was contacting me because he knew that I was involved with developing 21st Holdings' system. He wanted to know if I still had a relationship with them, which he heard might not still be the case. Although he has not said anything public about 21st Holdings, he was planning on doing so very negatively within the next two weeks.

I told Mr. Berger that I had a breach of contract suit against 21st Holdings that is now in the federal court located in San Francisco. At this time, the next step is to have a settlement conference, but the date for that conference has not yet been set up.

I said that 21st (Paul Kirkman) approached me in 1998 to write an underwriting manual for them on life settlements. I said why do an underwriting manual when you can automate the whole system? I then said that I designed the decision workflow and process, and developed the debit and credit assumptions. I said that a Tillinghast actuary from the local Minneapolis office, Randy ?, came in to provide life tables, and I picked the right one to use. 21st hired a software firm to build the system, but it was my intellectual property that is running the system. I defended the system for 21st's clients who inspected the business, including Lloyds.

I explained that in 1998, I was told by 21st that they could not pay me all the money for the system at once, so we had a written, 3-year contract that would pay me a fee for every case processed by the system. This worked well past the end of the 3-year term, and 21st continued to pay me these fees after 2001 on an oral agreement. I said that at no time did I assign my intellectual property to 21st Holdings.

I said that I put the assumptions into 21st's system with the clear understanding that after several years, I would look at the experience and fine-tune the system according to the actual experience of the system. I said that since 1998, 21st Holdings never let me in to check the system. Whenever I asked, they kept saying, "the system is working fine, you do not have to come in."

I said that in the fall of 2003, Paul Kirkman asked me to sign a new written contract, but it did not have my best interests in mind. We went back and forth about the contract until January 2004, when Mike Gaines called me about the problem between EMSI and Coventry. In that conversation with Mike, Mike said that Al Bergman was complaining not only about EMSI, but also about the results from 21st.

I then said that I called Paul Kirkman and shared with him what Mike Gaines had said. Paul Kirkman replied that there was nothing wrong with 21st's system, and wanted to continue negotiating the new contract between us. I told Paul Kirkman that I could not sign the contract as it was then written. I was then told that 21st was going to stop paying me until I signed the contract.

I said that I filed the suit against 21st in March/April of 2004, saying that they were in breach of contract, and that they were using my intellectual property without paying for it. Mr. Berger then said that he guessed that I did not represent 21st Holdings. I said he was right, although they are running a system with my property in it.

I told Mr. Berger that I could send him a copy of the suit. Mr. Berger said that he had 4 lawyers working for him, and they can readily retrieve copies of the suit using Westlaw. Mr. Berger said that I should contact my counsel because of the great downside of what 21st is doing now; the misuse of the property they are doing will be blamed on me by 21st Holdings as my fault.

Mr. Berger said that the magnitude of the misrepresentation of what 21st Holdings is doing to life settlement providers is staggering. They are publishing mortality curves that grossly mislead investors in life settlements about what the investors can expect. 21st Holdings recently made a presentation in Germany that show that their life expectancy calculations are better than others, but according to Mr. Berger's calculations, are popular with sellers of life policies, but will cheat purchasers of settlements by billions of dollars.

Mr. Berger said that should (or when) Federal officials catch up with them, 21st Holdings would blame me and the Tillinghast actuary for the problem, and say that they were not responsible. Mr. Berger said that my resume is prominently displayed in all of 21st's handouts. Mr. Berger compared this situation to a scale – the scale itself may weigh accurately, but if someone puts a thumb on it, it will not produce an accurate result. Mr. Berger said that I am at great risk of being blamed for 21st's misdeeds.

I asked Mr. Berger for his contact numbers: office (215) 836-8301, cell (215) 287-4300. I told him that I was paying for my suit against 21st out of my own pocket, and that I did not have the resources to afford an immediate injunction. Mr. Berger said there was an association that could help me financially with this, the Life Insurance Consumer Alliance. His vice president of Coventry, Michael Freedman, was the chair of this alliance, and that he would be very happy to help me.

I thanked Mr. Berger for his call, and said I was grateful that he called. Mr. Berger said that he is glad we had this conversation. He was in Baltimore now, but he said that when he got back to his office next week, he would read my complaints against 21^{st}. He wished me a very happy Labor Day weekend.

The call ended at 12:45 pm.